

REMARKS

As a result of this Amendment, claims 2, 4-10, 13, 15, 16 and 18-27 have been cancelled; claims 1, 3, 11, 12, 14 and 17 have been amended and claims 28 – 33 have been added.

Applicant acknowledges, with appreciate, the courtesy of an interview that was conducted in the United States Patent and Trademark Office between the undersigned counsel and Examiners Lawrence Ferguson and Rena Die on September 21, 2004.

During the interview the new claims submitted herewith were discussed. All of these claims are now directed to a white, opaque plastic label, rather than generally to a white opaque film. Moreover, the only two independent claims remaining in this application (claims 1 and 28) specify that the label includes an outer layer with “at least 25% to about 50% by weight . . . of a void creating additive” and that “an aqueous cold glue adhesive” is included on that voided layer. As will be pointed out in detail hereinafter, none of the prior art discloses or renders obvious a plastic label including an outer layer having the combination of the specified percentage of voiding agent therein, and an aqueous cold glue adhesive thereon.

Independent claim 1, in addition to including the above-stated limitations relating to the voiding agent and aqueous cold glue adhesive, is directed to a multilayer plastic label having an internal core layer and opposed outer skin layers thinner than said core layer. Claim 1 also specifies that one of the outer skin layers is non-voided and is oxidatively treated to receive a metal layer thereon. Claim 1 further specifies that the other outer skin layer is the one with the voiding agent therein and the aqueous cold glue adhesive thereon.

In the outstanding Office Action, the Examiner rejected claims 1 – 15, 17 and 19 “under 35 U.S.C. 103(a) as being unpatentable over Alder et al. (U.S. 5,773,136) in view of Wilkie (U.S. 6,022,612).”

The Examiner also rejected claims 20 and 27 “under 35 U.S.C. 103(a) as being unpatentable over Alder et al. (U.S. 5,773,136) in view of Wilkie (U.S. 6,022,612) further in view of Bright (U.S. 6,485,803).”

Thus, in all of the rejections the Examiner relied upon the Alder et al. ‘136 patent as the primary reference, and the Wilkie ‘612 patent as a secondary reference.

In the interview, the Examiners agreed that the above-stated rejections, which were advanced against the claims prior to their amendment herein, were not applicable to the amended and new claims presented herein.

Counsel pointed out that Alder et al. teaches an entirely different film structure from applicant’s invention and that the Alder et al. structure is intended to perform in a substantially different way from applicant’s invention by employing a structure that actually teaches away from applicant’s invention. In fact, the Alder et al. patent does not disclose or relate to plastic labels, as is specified in the claims presented for consideration herein.

In particular, the Alder et al. ‘136 patent is directed to a peelable film, wherein the actual peeling of the film from the substrate to which it is attached provides evidence that a seal has been opened. In the Alder et al. structure the intermediate layer that is peelable is required to be free of voids and includes a heat-sealable adhesive thereon.

In distinction to the teachings in the Alder et al. patent, in the present invention applicant employs a cold glue adhesive (not a heat sealable adhesive) on a layer which is required to be heavily voided.

Stating this another way, the Alder et al. structure employs a heat sealable layer on the surface of an intermediate layer that, is free of voids. As was pointed out in the interview, the heat sealable layer is not a water-based cold glue adhesive of the type described and claimed in the present application.

As counsel also pointed out, including a high percentage of particulate material in the intermediate layer in Alder et al. to accommodate a cold glue adhesive would be in direction contradiction to the teachings in Alder et al. of providing an intermediate layer that is required to be free of any void-creating additives.

The Wilkie et al. '612 patent, which was relied upon as a secondary reference in the rejection of all of the claims, is directed to a packaging film that is a biaxially oriented polypropylene film having a matte-finish and improved cold seal receptivity; not cold glue receptivity. As was pointed out in the interview, cold seal receptivity is not the same as – or even related to – the use of an aqueous cold glue adhesive specified in the claims presented for consideration herein.

Thus, the combination of the teachings in Wilkie et al. with the teachings of Alder et al., even if it were proper (which it is not) does not teach or render obvious the label structures specified in independent claims 1 and 28. Specifically, as pointed out by counsel, Alder et al. clearly requires that the intermediate layer receiving the adhesive component be void free.

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Voiding this layer to receive any type of adhesive, would be in direct contradiction to the Alder et al. teaching. Moreover, Wilkie et al. does not teach voiding any layer to receive any adhesive thereon, let alone teaching the claimed percentages of a voiding agent in an outer layer for receiving a cold glue adhesive thereon.

During the interview counsel referred the Examiners to an unsigned copy of a DECLARATION OF BRUCE S. MARKS UNDER 37 C.F.R. § 1.132, clearly explaining the significant differences between a cold seal adhesive of the type disclosed in various prior art references and the cold glue adhesive required to be employed in the present invention and specifically included as a limitation in the claims presented for consideration herein. An executed copy of the DECLARATION OF BRUCE S. MARKS UNDER 37 C.F.R. § 1.132 (hereinafter "Marks' Declaration") is enclosed herewith as Exhibit A.

Based upon the discussion in the interview, the Examiners agreed that the claims which are presented herein were patentable over the various references applied in the most recent Office Action, and agreed that the arguments and discussion overcame those rejections.

During the interview counsel advised the Examiners that applicant recently became aware of a number of additional documents, which were not cited by the Examiner during the prosecution of the present application. These latter documents have been officially made of record in an Information Disclosure Statement that was mailed to the United States Patent and Trademark Office on September 20, 2004. A separate copy of the Information Disclosure Statement also was forwarded directly to the Examiners in advance of the interview

As was pointed out in the interview, none of the additional documents made of record by

applicant in the Information Disclosure Statement disclose or remotely suggest the structure of a white opaque plastic label including an outer layer having at least 25% to about 50% by weight, based on the weight of said outer layer, of a void-creating additive therein, and further including an aqueous cold glue adhesive on a surface of said outer layer for securing the label to a container. These latter limitations are included in both independent claims 1 and 28, which are the only independent claims presented for consideration herein.

Claim 1, in addition to requiring an outer skin layer having at least 25% to about 50% by weight, based upon the weight of said skin layer, of a void-creating additive, and an aqueous cold glue adhesive on said outer skin layer, is further limited to a multi-layer metallizable label including at least an internal core layer and opposed outer skin layers that are thinner than the core layer. Moreover, claim 1 further requires that one of the outer skin layers be a non-voided layer having a surface thereof oxidatively treated to receive a metal layer thereon. The other skin layer is the one containing the voiding agent therein and the cold glue adhesive thereon.

As noted above, none of the additional documents made of record in the Information Disclosure Statement discloses any label structure wherein a cold glue adhesive is applied to a layer of a plastic label including at least 25% to about 50% by weight of a void-creating additive.

In fact, the only additional documents made of record that disclose a label structure employing a cold glue adhesive are Process Resources Corporation International Publication No. WO 99/19412 and Squire et al. U.S. Publication No. 2002/0146520.

The Process Resources Corporation '412 publication discloses techniques for labeling of plastic, glass or metal containers or surfaces with polymeric labels employing a cold glue

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adhesive. In accordance with the disclosed methods, a hydrophilic layer is applied to the polymeric label for receiving a cold glue adhesive on it. This publication does not disclose the inclusion of an void creating additives in the hydrophilic layer. Rather, the layer for receiving a cold glue adhesive is merely described as being a hydrophilic layer. Clearly there is no disclosure of including at least 25% to about 50%, by weight, of a void creating additive in the hydrophilic layer for the purpose of receiving an aqueous, cold glue adhesive.

The Squire et al. '520 publication, which is the only other document disclosing a label employing a cold glue adhesive, was filed on January 26, 2001. The claims presented for consideration herein are all entitled to the February 8, 2000 filing date of applicant's Provisional Application Serial No. 60/181,036. Thus, the Squire et al. '520 published application is not an effective reference against the claims presented herein.

Applicant has attached, as Exhibit B, a copy of Provisional Application No. 60/181,036, upon which the present utility application is based. Referring first to the provisional application, it should be noted that it discloses a multi-layer, metallizable, white opaque plastic label, having an outer layer that preferably includes a voiding agent "in an amount of about 20% to about 50% by weight of the skin layer to achieve the desired porosity [for retaining a cold glue adhesive thereon]." (Page 5, sentence beginning on line 18.) In the Example bridging pages 8 and 9 of the application, a three-layer film is described that includes a non-voided metal bonding layer, a non-voided core and a voided back skin layer including 25% of a voiding agent for receiving an aqueous cold glue adhesive thereon.

The specific disclosure of a label employing 25% of a void-creating additive in conjunction with the disclosed upper limit of 50% of such an additive, clearly supports the claimed range of at least 25% to about 50% by weight of a void-creating additive.

This claimed range of at least 25% to about 50% by weight also is disclosed in the present utility application. Specifically, although applicant describes the broadest range for the void-creating additive to be about 20% to about 60% by weight (page 7, first full paragraph), applicant includes the same example as in the provisional application, employing 25% of the void-creating additive. Moreover, although the highest upper limit disclosed in the present application is stated to be 60%, applicant also states that most preferably the upper limit should be 55% or less and “even more preferably no more than 50%.” (Page 8, sentence beginning on line 1).

The stated example employing 25% voiding agent in conjunction with the disclosure of the most preferred upper limit of voiding agent being 55% or less and “even more preferably no more than 50%” supports the claimed range of at least 25% to about 50% specified claims 1 and 28. In addition, the sentence bridging pages 7 and 8 of the present application specifies that in the most preferred embodiments of the invention the void-creating additive should be at least 25%, by weight. This is additional support for the lower claimed limit of the range specified in independent claims 1 and 28.

Thus, the claimed limitation that the outer skin layer includes at least 25% to about 50% by weight is supported in both the present utility application and the earlier filed provisional application. All of the remaining claims also are supported in both applications. Thus all of the

claims presented for consideration herein are entitled to the filing date of the provisional application; thereby removing the Squire et al. '520 publication as a reference against this utility application.

As is pointed out hereinafter, none of the other references made of record in the Information Disclosure Statement disclose the use of a cold glue adhesive on a label structure, let alone a cold glue adhesive on an outer layer employing at least 25% to about 50% by weight of a void-creating additive therein.

Liu et al. U.S. Patent No. 4,931,327 discloses a white opaque, oriented polypropylene film for a tamper-evident package including a core layer and at least one cavitated skin layer that has an internal cohesiveness less than the internal cohesiveness and bonding strength of an adhesive layer applied to the cavitated skin. This patent does not relate to any label structure, as is specified in all of the claims presented for consideration herein.

The disclosed adhesives in the Liu et al. '327 patent can either be a heat-seal adhesive or a cold seal adhesive that can seal to itself; not a cold glue adhesive as specified in the claims of this application. The disclosed cold-seal adhesives are usually rubber-based materials. (Column 3, line 66 – column 4, line 1). As disclosed, cold seal pressure-sensitive adhesives rather than heat-seal coatings generally are employed to package products that can be damaged by the application of heat, such as ice cream, candy bars and confections. (Column 4, lines 1 – 3).

The cavitated-tamper evident skin upon which the cold-seal coatings can be applied in the Liu et al. structure is disclosed as including a cavity-inducing filler being present in amounts

from about 1 – 20 weight percent of the skin layer prior to orientation, with about 10 – 15% weight percent being preferred.

Thus, the teachings of the Liu '327 patent are deficient in several respects. First, the Liu et al. patent does not disclose a plastic label. Second, the Liu et al. patent does not disclose any relationship between the degree of voiding in a skin layer and the use of an aqueous-based cold glue adhesive. Third, the Liu patent does not disclose the use of a cold glue adhesive. And fourth, the Liu patent does not disclose the claimed range of void creating additive in any layer, let alone in a layer including a cold glue adhesive thereon.

As is clearly pointed out in the enclosed Marks' Declaration, the disclosed cold seal adhesives are not aqueous cold glue adhesives that are described and claimed in the above-captioned patent application and a person skilled in the art would not understand the disclosure of such cold seal adhesives to be related to or have any bearing on cold glue adhesives.

As noted in the Marks' Declaration "cold glue adhesives" and "cold seal adhesives" are both well-known in the art, and the "cold glue adhesives" are understood by those of ordinary skill in the art to represent a class of materials distinct from and not including "cold seal adhesives."

One very distinct functional difference between cold glue adhesives and cold seal adhesives, as pointed out in the Marks' Declaration, is that cold glue adhesives of the type employed in the present invention form a bond between two different substrates, whereas cold seal adhesives are designed to be sealed to itself. Moreover, a cold glue adhesive is applied at

the moment of required adhesion, e.g., at the time of labeling a container, whereas a cold seal adhesive generally is applied and dried at a site remote from the actual use of the product including such adhesive.

At the moment of application of a cold glue adhesive to a label, the bond between the surfaces of the label and container provided by the adhesive is initially a weak bond. However, the bond strengthens as the aqueous solvent for the cold glue is absorbed into the cavitated skin layer and dries or cures over time.

If a cold glue adhesive is not applied at the moment of required adhesion, i.e., if it is applied to a substrate and first allowed to dry, and, after the cold glue has dried, the substrate with the dried cold glue is applied onto a container in order to attempt to form a bond between the surfaces of the substrate and container, no bond is formed at all. (See Marks' Declaration.)

As noted earlier, in distinction to cold glue adhesives, cold seal adhesives are not applied at the moment of required adhesion. Rather, a cold seal adhesive is applied to a substrate in an operation that is separate from the final sealing operation.

In particular, the cold seal adhesive is coated onto a substrate and then is dried on the substrate before it is employed to form a sealing function. The cold seal, upon drying, feels tacky to the touch and in fact is a type of pressure-sensitive adhesive of the type disclosed in the Liu et al. '327 patent, as well as in the Wilkie et al. '612 patent and in the Swan et al. '123 patent, to be discussed in detail hereinafter.

The substrate or label with the coating of dried and tacky cold seal adhesive thereon is later sent to an end user, such as a candy manufacturer, often with a separate, release layer on the adhesive. The end user will then use the substrate with the coating of dried, cold seal adhesive thereon to seal the package by the application of pressure. In distinction to cold glue adhesives, a cold seal adhesive is designed to be adhered to itself and requires only contact pressure to form the bond.

In summary, the major functional differences between cold glue adhesives of the type described and claimed in the instant invention and cold seal adhesives of the type disclosed in the Liu et al. '327 patent are the following:

1. A cold glue adhesive does not bond to itself or to other substrates if dried first. In distinction, a cold seal adhesive is a pressure-sensitive adhesive that does bond to itself after being dried.
2. A cold glue adhesive is applied to a label or other substrate at the moment of required adhesion to hold two different substrates (e.g., a label and container) together to form a bond. In distinction, a cold seal adhesive employs a two-step process to form bonds. First, it is applied to a substrate and then dried. Second, a bond is formed with itself in a second step on a packaging line (generally at a different physical location) using only pressure to induce the seal.
3. An aqueous cold glue adhesive provides a weak initial bond, with the bond strength developing over time as the glue dries. In distinction, a cold seal adhesive is a pressure-sensitive adhesive that forms a strong, instant, initial bond; substantially greater than the initial, weak bond provided with a cold glue adhesive.

A detailed explanation of the various differences between "cold glue adhesives" and "cold seal adhesives" is included in the Marks' Declaration, and clearly supports the conclusion

of Marks that people skilled in the art understand the fact that the overall formulation of cold glue adhesives is completely different from the overall formulation of cold seal adhesives and that people skilled in the art understand that cold glue adhesives represent a class of materials having particular formulations and functions distinct from and not including the class of materials encompassed by the term "cold seal adhesives."

Thus, Marks concludes the following:

Based upon the distinction in the formulations and uses of "cold seal adhesives" and "cold glue adhesives," on information and belief people skilled in the art would not be directed or motivated to consider structural features in films specifically determined to be useful with aqueous-based "cold glue adhesives" based upon films disclosed for use with "cold seal adhesives."

Marks goes on to state that the use of a cold seal adhesive on packaging films as disclosed in the Liu et al. '327 patent does not provide any motivation to a person skilled in the art for employing an aqueous cold glue adhesive on the same packaging substrate. In fact, as concluded by Marks in his Declaration, the use of a cold glue adhesive is counter-indicated in the packaging products disclosed in the Liu et al. '327 patent, since the adhesive is not intended to be employed for its adhesive application properties until the film has been shipped and used in a separate packaging operation, such as in the packaging of ice cream, candy bars and confections. (Column 4, lines 1 – 3 of the Liu et al. '327 patent). As noted earlier in these remarks, the Liu et al. patent clearly is not directed to plastic labels as is now specified in the claims of this invention.

Swan et al. U.S. Patent No. 4,965,123 discloses opaque, oriented polymeric film structures which, in accordance with one use, can be employed as label stock. The disclosure in the Swan et al. '123 patent is deficient in several respects with respect to teaching or rendering obvious the label structures specified in the claims presented for consideration herein. First, Swan et al. do not disclose the use of any cold glue adhesive. Second, because there is no disclosure of using a cold glue adhesive, Swan et al. do not disclose any connection between the degree of cavitation required in any skin layer and the use of a cold glue adhesive.

Swan et al. state that at least one of the skin layers should have voids created therein, and specifically state that in label applications the function of the voided skin layer is to improve the cutability of the film (paragraph beginning on line 44 of column 7). This same benefit is alluded to several times in the Swan et al. '123 patent.

In particular, Swan et al. state that the paper-like cutting characteristics have been found to be particularly beneficial in the production of coextruded pressure-sensitive label stock material having a peelable backing affixed thereto. Swan et al. do not disclose the use of any aqueous cold glue adhesive system in conjunction with the label stock. Moreover, Swan et al. does not state that cutability is even an issue in labels employing an aqueous cold glue adhesive, which is the subject of the present invention.

Although Swan et al. state that the void-initiating particles employed in the skin layer can be present in an amount of up to 70% by weight of the skin layer prior to orientation; the preferred range is stated to be from about 5 to about 20% by weight (column 8, paragraph beginning on line 5). It should be noted that the reference to the percent of void-initiation

particles is not in any way related or correlated to the use of any cold glue adhesive. Moreover, referring to the examples, there is no indication that one would want to use percentages of void-creating additives above 20% for label applications employing any type of adhesive. (See specific Examples set forth in the Swan et al. '123 patent.)

Swan et al. state that the pressure-sensitive adhesive component employed in their invention can be selected from amongst any of the materials which are known to be useful for that purpose (column 9, sentence beginning on line 23). The acceptable materials described in the paragraph beginning on line 23 of column 9 are not cold glue adhesives that are described and claimed in the instant application; they are pressure-sensitive adhesives.

In Examples 1 and 2 of the Swan et al. '123 patent, beginning on column 10, specific three-layer structures are described for use in label applications. In both disclosed embodiments the core layer includes 6 weight percent of a void-initiating particle (PBT) and one of the skin layers includes 15% by weight of calcium carbonate. In Example 2 the adhesive employed is a pressure-sensitive adhesive; not a cold glue adhesive. In fact, there is absolutely no disclosure of employing a cold glue adhesive in the label constructions disclosed in the Swan et al. patent.

It also should be noted that specific features set forth in dependent claims are not disclosed in the Swan et al. '123 patent. For example, Swan et al. does not disclose that a metallized layer should be employed in the structure, let alone that the film should be designed to achieve a higher brilliance in a metallized label structure by providing a metallized surface that is free of void-creating additives, as is specified in independent claim 1 and dependent claim 30, or by providing a core layer that is free of void-creating additives in it, as is specified in dependent

claims 11 and 33. In fact, Swan et al. specifically require that the disclosed multilayer film include a core layer with a void-creating additive in it.

Courtaulds Films and Packaging Ltd International Publication No. WO 89/02859 discloses a polymeric film including, in its broadest disclosure, a layer of propylene homopolymer as a core layer, a layer of voided polypropylene on one side of the core layer, and a layer of a printable polymer on the other side of said core layer. This publication states that the voiding agent in the voided polypropylene is in the range of 4 to 25%; more preferably 15 – 25%, and when chalk is employed to provide a good tamper-evident seal, the voided layer should include 20 – 25% voiding agent. In this disclosure the intended effect is to create a weak interface between the propylene homopolymer and the voided polypropylene layer, such that evidence of tampering is shown by separation of the voided layer from the propylene homopolymer layer. The '859 publication does not relate to a plastic label of the type specified in the claims presented for consideration herein.

The '859 publication discloses the inclusion of a polymeric layer on the voided polypropylene layer to provide heat sealability. Suitable polymers for providing heat sealability are identified and can be employed in either heat seal or cold seal methods (page 7). The '859 publication does not disclose the use of any aqueous, cold glue adhesive, let alone an aqueous cold glue adhesive adhered to a voided layer in a plastic label. Specifically, there is absolutely no disclosure of employing an aqueous cold glue for any purpose, let alone correlating the amount of such a cold glue adhesive with the use of any percentage of voiding agents in any plastic label.

Thus, the Courtaulds '859 publication, like the disclosures in both the Liu et al. '327 patent and the Swan et al. '123 patent fails to disclose the use of any cold glue adhesive on any substrate, and clearly does not disclose correlating the use of a cold glue adhesive with the use of any percentage of a voiding agent in a layer intended to receive such a cold glue adhesive in a plastic label structure.

Moreover, the Courtaulds '859 publication fails to disclose or suggest limitations included in various dependent claims presented for consideration herein. For example, the Courtaulds '859 publication does not disclose the use of any metallized film, and therefore does not include any teaching of enhancing the brilliance of a metallized surface of any product, which is a benefit achieved by the preferred structures specified in claims 1, 11, 17, 30 and 33.

Canadian Patent 2,125,891, which is assigned to the same assignee as the present application, discloses a laminate film including a polypropylene layer that can act as a barrier coating receiving layer by including a hard resin therein, or alternatively, a separate barrier coating receiving layer with a hard resin layer therein can be provided on the original layer. This patent states that an additional layer can be applied on the other side of the multilayer structure, which can be, for example, "a conventional sealable, e.g., heat sealable- printable, or slip layer." (page 12, lines 1-3). The '891 patent then discloses suitable heat sealing layers on page 12. The patent states that conventional additives "in conventional amounts" can be employed in the polyolefin layer or layers. This patent does not disclose plastic label structures and does not disclose the use of any cold glue adhesive. Moreover, there is absolutely no disclosure of including a voiding agent in any adhesive retaining layer to accommodate a cold glue adhesive in

any product, let alone in a plastic label.

Mitsui European Patent EP 0779325 discloses a porous, uniaxially or biaxially stretched film that is formed from a resin composition containing 25 – 70 parts by weight of a polyolefin resin and 75 – 30 parts by weight of an inorganic filler. The film is described as having a softness and feel of cloth, with good moisture vapor transmission and good uniformity of film thickness. The purpose of the inorganic filler is to create a breathable substrate for use as a cloth substitute. There is no suggestion of applying a cold glue adhesive to any porous layer or of employing the product in applications requiring any such adhesive. Clearly this patent does not relate to a plastic label employing a cold glue adhesive on a cavitated outer layer.

Courtaulds European Patent EP 0546741 relates to an in-mold label and articles having such a label applied thereto. The label is described as having a non-voided core layer and a voided propylene homopolymer outer layer which secures to the plastic, molded article as the article is molded.

The Courtaulds '741 patent states that the voiding agent can be either organic or inorganic and specifically states that the chalk content of the voided layer preferably is "up to 5% by weight of the layer." The patentee states that the amount of voiding agent usually should be at least 2.5% and can go up to 15% by weight of the layer, with preferred amounts of voiding agents being in the range of 5 – 10% by weight.

Thus, the Courtaulds '741 European Patent does not remotely relate to any label stock wherein a cold glue adhesive is used. Rather, the formation of the thermoplastic article actual

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results in adherence of the label to that article. Second, the amount of the voiding agents suggested for use in the layer that secures to the molten polymer layer is in a range well below the range specified in the claims of the instant application.

As noted earlier, Process Resources Corporation International Publication WO 99/19412, although disclosing the use of aqueous adhesives in label applications, discloses the application of such aqueous adhesives to a hydrophilic layer that is not disclosed as being voided. Clearly, the '412 publication does not disclose any label structure wherein the skin layer receiving the cold glue adhesive has at least 25% to about 50% by weight, based upon the weight of said opposed outer skin layer, of a void-creating additive.

Also, as discussed earlier, Squire et al. U.S. Publication No. 2002/014650 was filed on June 26, 2001; after the effective filing date of February 8, 2000 of the instant utility application. Therefore, the Squire et al. '650 publication is not an effective reference against the claims presented for consideration herein.

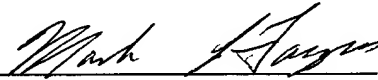
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In view of the above remarks, applicant submits that of the claims presented for consideration herein set forth patentably novel subject matter and an indication to that effect is respectfully requested.

Respectfully submitted,

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